

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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FRANCISCO VIDAL,

Plaintiff,

v.

A.W. M HUBBARAD-PICKETT,

Defendants.

Case No. 2:19-cv-01491-RFB-BNW

ORDER

This action is a *pro se* civil rights action filed pursuant to 42 U.S.C. § 1983 by a former prisoner. On December 11, 2020, this Court issued an order denying the application to proceed *in forma pauperis* for prisoners as moot because Plaintiff was no longer incarcerated. (ECF No 7.) The Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* for non-prisoners or pay the full filing fee of \$400.00 within thirty (30) days from the date of that order. Id. The thirty-day period has now expired, and Plaintiff has not filed an application to proceed *in forma pauperis* for non-prisoners, paid the full filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. Thompson v. Hous. Auth. of City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal

1 for failure to comply with an order requiring amendment of complaint); Carey v. King, 856  
 2 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring  
 3 *pro se* plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833  
 4 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); Henderson  
 5 v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and  
 6 failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to obey  
 8 a court order, or failure to comply with local rules, the court must consider several factors:  
 9 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
 10 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
 11 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
 12 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at 130;  
 13 Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.


14 In the instant case, the Court finds that the first two factors, the public's interest in  
 15 expeditiously resolving this litigation and the Court's interest in managing the docket,  
 16 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs  
 17 in favor of dismissal, since a presumption of injury arises from the occurrence of  
 18 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See  
 19 Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy  
 20 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor  
 21 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
 22 the court's order will result in dismissal satisfies the "consideration of alternatives"  
 23 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779  
 24 F.2d at 1424. The Court's order requiring Plaintiff to file an application to proceed *in forma*  
 25 *pauperis* for non-prisoners or pay the full filing fee within thirty days expressly stated that  
 26 failure to timely comply with the order could result in dismissal of this action. (ECF No.  
 27 7 at 2.) Thus, Plaintiff had adequate warning that dismissal would result from his  
 28 noncompliance with the Court's order to file an application to proceed *in forma pauperis*

1 for non-prisoners or pay the full filing fee within thirty (30) days.

2 It is therefore ordered that this action is dismissed based on Plaintiff's failure to file  
3 an application to proceed *in forma pauperis* for non-prisoners or pay the full filing fee in  
4 compliance with this Court's December 11, 2020 order. If Plaintiff wishes to pursue any  
5 claims, he must file a complaint in a new action with the required fee or application to  
6 proceed *in forma pauperis* for non-prisoners.

7 It is further ordered that the Clerk of Court shall enter judgment accordingly and  
8 close this case. No other documents shall be filed in this closed case.

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10 DATED THIS 22<sup>nd</sup> day of January, 2021.

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14 RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE  
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